

Voluntary Planning Agreement

Lithgow City Council (**Council**)

Coalpac Pty Limited (**Coalpac**)

DATED: _____

PARTIES:

Lithgow City Council of 180 Mort Street, Lithgow NSW 2790

(Council)

Coalpac Pty Limited of Level 1, 42 Morrow Street, Taringa QLD 4068

(Coalpac)

BACKGROUND:

- A. Coalpac Pty Limited is the proponent of the Coalpac Consolidation Project, a plan and summary of which is set out in Schedule 2.
- B. On 29 October 2010, Coalpac lodged a major project application for approval (10_0178) under Part 3A of the *Environmental Planning and Assessment Act 1979* to develop the Consolidation Project.
- C. As part of the Consolidation Project, Coalpac wishes to enter into a voluntary planning agreement with the Lithgow City Council to provide Development Contributions in accordance with Division 6 of Part 4 of the Act.
- D. Subject to the granting of the Project Approval and the conditions outlined in this Agreement, Coalpac has agreed to provide the Development Contributions described in Schedule 1.

AGREED TERMS

1. Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

- (a) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales, Australia.
- (c) **Capital Works** means the design, approval and construction of a reticulated sewerage system consisting of the construction of a sewerage treatment plant (or transfer of sewerage to an existing facility), the installation of mains, manholes, pumping stations (if necessary) and sewer junctions to enable existing premises at Cullen Bullen to connect to this system estimated to cost approximately \$4 million or such other capital works projects centred on Cullen Bullen as agreed between the parties in writing.
- (d) **Capital Works Contributions** means the monetary contributions provided by Coalpac to be used for the Capital Works as set out in Schedule 1.
- (e) **Coalpac Community Trust** means the community development fund to be established by Coalpac and to be administered by the Community Consultative Committee.

- (f) **Committee Guidelines** means the guidelines issued by the NSW Government Department of Planning titled "*Guidelines for Establishing and Operating Community Consultative Committees For Mining Projects*" attached to this agreement as Appendix A or any other statutory direction issued by Government authority.
- (g) **Community Consultative Committee** means the committee to be established in accordance with the Committee Guidelines and as outlined in Clause 6.2.
- (h) **Consolidation Project** means the consolidation, continuation and extension of the existing Cullen Valley Mine and Invincible Colliery located near the township of Cullen Bullen in New South Wales.
- (i) **Contribution Calculation** means the formula set out in Schedule 1.
- (j) **CPI** means the published Consumer Price Index (All Groups – Eight Capitals), or if that index is no longer published, then any other index which, in the reasonable opinion of Coalpac, is an equivalent index.
- (k) **Development Contributions** means the Capital Works Contributions and the Public Purpose Contributions as specified in Schedule 1.
- (l) **End of Mining Operations** means the date on which Coalpac, for the foreseeable future, ceases to extract coal from the approved area of disturbance as shown in the Project Approval.
- (m) **Financial Year** means each 12 month period during the Term commencing on 1 July and ending on 30 June.
- (n) **GST** has the same meaning as in GST Law.
- (o) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
- (p) **GST Law** has the meaning given to that term in the GST Act.
- (q) **Law** means any constitution or provision, statute, Act, regulation, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment, rule of common law or equity, rule, approval, consent or condition of approval or consent imposed by a competent entity exercising statutory jurisdiction in the relevant matter.
- (r) **Project Approval** means the major project approval 10_0178 for the Consolidation Project to be granted by the NSW Minister for Planning and the approval required for the conduct of the Consolidation Project under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).
- (s) **Public Purpose Contributions** means the monetary contributions provided by Coalpac to be used for a public purpose as defined in section 93F(2) of the Act.
- (t) **Tax Invoice** has the meaning given to that term in the GST Act.
- (u) **Term** means from the date of the Project Approval until the End of Mining Operations.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day on which the any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a party to this Agreement includes a reference to the servants, agents, and contractors of the party, and the party's successors and assigns.
- (m) Any schedules and attachments form part of this Agreement.

2. Planning agreement under the Act

The parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this Agreement

This Agreement is made in respect of the Consolidation Project the subject of the Project Approval.

4. Operation of this Agreement

The Agreement is subject and conditional upon the granting of the Project Approval on terms and conditions satisfactory to Coalpac.

5. Provision of Development Contributions

5.1 Development Contributions

Subject to this Agreement, Coalpac will pay the Development Contributions to the Coalpac Community Trust within 60 days of the granting of the Project Approval, in accordance with Table 1 of Schedule 1, and thereafter within 60 days after the start of each Financial Year (or part thereof) from the date of the Project Approval.

5.2 Amount and Form of Development Contributions

- (a) The amount of each Development Contribution is to be calculated in accordance with the Schedule 1 and the Contribution Calculation will be based on the annual royalty returns provided by Coalpac to the NSW Government for each Financial Year (or part thereof) during the Term.
- (b) Subject to clause 6.4(c), each Development Contribution amount will be apportioned between Capital Works Contributions and Public Purpose Contributions.
- (c) If for any reason, the Council does not proceed with the Capital Works, then all Development Contributions will be deemed to be Public Purpose Contributions.

5.3 Payment of Development Contributions

- (a) A Development Contribution is made for the purposes of this Agreement when cleared funds are deposited by Coalpac by means of electronic transfer into a bank account nominated by the Coalpac Community Trust.
- (b) Before making any Development Contributions, Coalpac must give the Coalpac Community Trust not less than two Business Days' written notice of:
 - (i) its intention to make an Development Contributions; and
 - (ii) the amount proposed to be paid.

5.4 Requirement for invoices

- (a) Upon receiving a notice from Coalpac pursuant to clause 5.3(b), the Coalpac Community Trust must provide Coalpac with a Tax Invoice for the amount of the contribution that Coalpac proposes to pay.
- (b) if the Coalpac Community Trust fails to provide Coalpac with a Tax Invoice for the amount proposed to be paid by Coalpac, then Coalpac:
 - (i) is not required to pay a Development Contributions; and
 - (ii) will not be in breach of this Agreement if it fails to pay a Development Contribution at the time required by this Agreement.
- (c) Nothing in subclause (b) prevents the Coalpac Community Trust from subsequently issuing a Tax Invoice and Coalpac will pay the Development Contribution within 60 days of receipt.

5.5 Effect of making the Development Contributions

The parties agree that upon the payment of the total amount of the Development Contributions to the Coalpac Community Trust, no further monetary contributions are payable under this Agreement.

5.6 Use of Development Contributions

The Coalpac Community Trust must only use the funds transferred by Coalpac to the Coalpac Community Trust as Development Contributions as outlined in Schedule 1, or as otherwise agreed by Coalpac in writing.

6. Coalpac Community Trust

6.1 Community Trust

Coalpac will establish a community development fund through a special purpose trust (the “**Coalpac Community Trust**”) which will be administered by the Community Consultative Committee.

6.2 Community Consultative Committee

- (a) The membership of the Community Consultative Committee will be established in accordance with the Committee Guidelines or any other statutory direction issued by a Government authority and will consist of:
 - a. an independent chairperson;
 - b. three representatives of the local community and other stakeholders;
 - c. one representative of the Lithgow City Council;
 - d. two representatives of Coalpac, including the person with direct managerial responsibility for environmental management of the Consolidation Project.
- (b) The appointment of members will be conducted in accordance with the Committee Guidelines or any other statutory direction issued by a Government authority.

6.3 Meetings

Meetings of the Community Consultative Committee will be held in accordance with the Committee Guidelines or any other statutory direction issued by a Government authority.

6.4 Use of Capital Works Contributions

- (a) The use of the Capital Works Contributions will be solely for the purpose of the Capital Works.
- (b) Prior to payment of any Capital Works Contributions, the Council must provide to Coalpac a project timetable for design, approval, construction and commissioning of the Capital Works.
- (c) After the design stage of the Capital Works, the Council must provide Coalpac with a confirmation of the costs required to carry out the remainder of the Capital Works.
- (d) If at any time during the Term the Capital Works become fully funded by the Capital Works Contributions, then from that time onwards the total amount of the Development Contributions will be allocated to Public Purpose Contributions.
- (e) The parties acknowledge and agree that the Capital Works remain the property and responsibility of the Council and the Capital Works Contribution must not be used for the operation, upkeep, maintenance or repair of the Capital Works.

6.5 Allocation and Use of Public Purpose Contributions

The allocation and use of Public Purpose Contributions will be determined by the Community Consultative Committee but must be in accordance with section 93F(2) of the Act.

7. Application of s94 and s94A of the Act

The operation of sections 94 and 94A of the Act is excluded and does not otherwise apply to the Consolidation Project or the Project Approval.

8. Review of this Agreement

This Agreement may be varied or amended only by the express written approval of both parties and in compliance with the Act.

9. Dispute Resolution

9.1 Application

Any dispute or difference between the parties arising under or in connection with this Agreement, including any dispute or difference as to the formation, validity, existence or termination of this Agreement (**Dispute**) must be resolved as set out in this clause 9. A party must not commence any court proceedings relating to a dispute unless it complies with clause 9.

9.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

9.3 Parties to resolve Dispute

Within 14 days of the party receiving the notice referred to in clause 9.2 the parties (or those parties the subject of the Dispute) must meet to attempt in good faith to resolve the Dispute.

9.4 Mediation

If the parties do not agree within 14 days of receipt of notice under clause 9.2 (or any further period agreed in writing by them) the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales. If the parties do not agree on a mediator a party may at any time request the President of the Planning Institute (NSW Division) or the President of the NSW Law Society, whichever is the most appropriate, to select the mediator and determine the mediator's remuneration, which cost must be borne by the parties equally.

9.5 Arbitration

- (a) If within 14 days of the commencement of mediation under clause 9.4, or such further time as agreed in writing by the parties, the Dispute is not resolved, either party will have the right to refer the Dispute to binding arbitration pursuant to the *Commercial Arbitration Act 1984* (NSW) by issuing a written notice requiring the matter to be referred.
- (b) The arbitration shall be conducted in accordance with the Institute of Arbitrators and Mediator's Australia Rules for the conduct of Commercial Arbitrations.
- (c) A party must not commence arbitration proceedings in respect of a Dispute unless it has complied with clause 9.2 , 9.3 and 9.4.
- (d) The arbitrator will be appointed by the President of the Institute of Arbitrators and Mediators Australia.
- (e) The seat or legal place of arbitration shall be in Sydney, NSW.
- (f) Parties to the arbitration shall be entitled to legal representation.
- (g) The laws relating to evidence will apply to the arbitration.

9.6 Confidentiality

Any information or documents disclosed by a party under this clause:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

9.7 Costs

Each party must bear their own costs relating to any dispute resolution process.

9.8 Breach of this clause

If a party to a Dispute breaches clauses 9.1 to 9.6, the other parties to the Dispute do not have to comply with those clauses in relation to the Dispute.

9.9 Court Proceedings

If the dispute is not resolved within 60 days after notice is given under clause 9.2, then any party which has complied with the provisions of this clause 9, may in writing terminate any dispute resolution process undertaken under clause 9 and may commence court proceedings in relation to the dispute.

9.10 No prejudice

This clause 9 does not prejudice the right of any party to institute court proceedings for urgent injunctive or declaratory relief in any matter arising out of or relating to this Agreement.

10. Agreement does not fetter discretion

Nothing in this Agreement shall be construed as requiring the Council or the Coalpac Community Trust to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

11. Termination

11.1 This Agreement will terminate:

- (a) on the declaration by a court of competent jurisdiction that a Project Approval is invalid; or
- (b) at the end of the Term, and if the Consolidation Project is extended beyond the Term, then a new Agreement must be negotiated.

11.2 In the event of termination of this Agreement, any funds that have been paid by Coalpac as Development Contributions prior to termination, can continue to be expended in accordance with the terms of this Agreement.

12. GST

12.1 **Defined GST terms**

Defined terms used in this clause 12 have the meaning ascribed to them in the GST Law.

12.2 **GST to be added to amounts payable**

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or Consideration to be provided

under or in accordance with this Agreement are exclusive of GST.

12.3 Tax invoice

If a party is liable for GST on any payments made under this Agreement, the other party must issue a tax invoice (or an adjustment note) to the liable party for any GST payable under this agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

12.4 GST obligations to survive termination

This clause 12 will continue to apply after expiration of termination of this Agreement.

13. Notices

13.1 Any notice, consent, information, application or request that must or may be given or made to a party this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that party at its address set out below;
- (b) Faxed to that party at its fax number set out below;
- (c) Emailed to that party at its email address set out below;

Council

Attention: Roger Bailey
Address: Lithgow City Council
180 Mort Street, Lithgow NSW 2790
Fax Number: (02) 6351 4259
Email: Roger.Bailey@Lithgow.nsw.gov.au

Coalpac

Attention: Ian Follington
Address: Coalpac Pty Limited
Invincible Colliery, Castlereagh Highway, Cullen Bullen
NSW 2790
Fax Number: (02) 6359 0608
Email: ifollington@cetresources.com

13.2 If a party gives the other party three (3) Business Days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that party if it is delivered, posted or faxed to the latest address or fax number.

13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address;
- (b) If it is sent by post, two (2) Business Days after it is posted;
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

- 13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

14. Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligation, a party may give or withhold an approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give reasons for giving or withholding consent or for giving consent subject to conditions.

15. Costs

The costs associated with the preparation, execution, stamping and registration of the Agreement will be borne by Coalpac.

16. Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Agreement was executed, except as permitted by law.

17. Further acts

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

18. Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

19. Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

20. Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

21. Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligations or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

22. Counterparts

This Agreement may be executed in any number of counterparts.

23. Binding on parties

This Agreement is binding on each party's heirs, successors and assigns.

24. Change of Ownership

Coalpac must not transfer ownership of the Cullen Valley Mine or Invincible Colliery to another party without first procuring a binding arrangement between the purchaser and Council for the continuation of the terms of this Agreement between the purchaser and Council.

DEVELOPMENT CONTRIBUTIONS

1. Calculation

Coalpac will contribute an amount of \$0.07 per tonne (“**Rate**”) of coal sold per annum for each Financial Year (“**Contribution Calculation**”), subject to the initial fixed payments and allocation percentages set out below.

2. CPI Increases

The Rate used to calculate the Contribution Calculation will be subject to a CPI increase each year using the following formula:

$$\text{Rate} = R \times X/Y$$

Where:

R = is the Rate applicable immediately before the relevant CPI increase

X = is the CPI last published before the relevant CPI increase date

Y = is the CPI last published 12 months before the relevant CPI increase date

3. Initial Fixed Payments and Allocation Percentages

The payment of the Development Contributions by Coalpac will be made in accordance with Table 1 below:

Table 1

Relevant Payment Period	Column A Capital Works Contribution Fixed Payment or Allocation %	Column B Public Purpose Contribution Fixed Payment or Allocation %	Total Payment
Within 60 days after the grant of the Project Approval	\$50,000	\$25,000	\$75,000
Within 60 days of the first Financial Year end that falls after the grant of the Project Approval	\$75,000	\$50,000	\$125,000
Within 60 days of each subsequent Financial Year end for the remainder of the Term	75% of the Contribution Calculation	25% of the Contribution Calculation	Total of Column A plus Column B for a relevant year

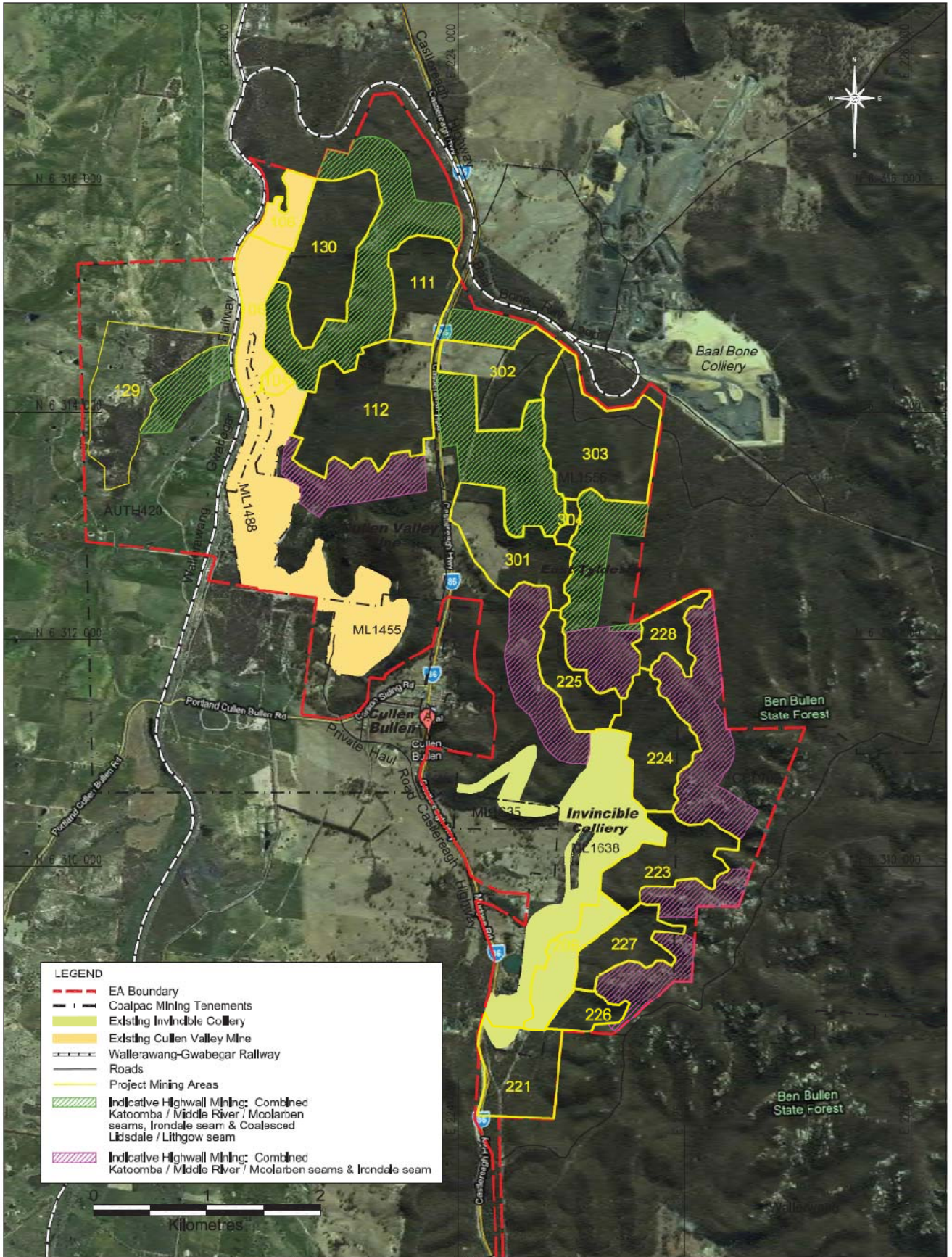
COALPAC CONSOLIDATION PROJECT SUMMARY

Coalpac is seeking approval from the Minister for Planning under the Environmental Planning & Assessment Act 1979 (EP&A Act) to consolidate the operations and management of the Cullen Valley Mine and Invincible Colliery and continue coal mining under a single, contemporary planning approval (the Project).

The Project would allow coal mining operations largely within Coalpac's current mining tenements to continue for a further period of 21 years to predominantly supply Mt Piper Power Station at up to 70% of coal requirements for electricity generation.

The Project includes:

- Consolidation and extension of the existing Cullen Valley Mine and Invincible Colliery to produce up to a total of 3.5 Mtpa product coal;
- Continuation of coal supply to the local Mt Piper Power Station via a new dedicated coal conveyor over the Castlereagh Highway and (emergency supply to) Wallerawang Power Station (via road), with continued flexibility for supply to additional domestic destinations and Port Kembla for export;
- Upgrades to existing administration, transport and other infrastructure;
- Construction and use of a bridge over the Castlereagh Highway to link operations east and west;
- Construction and operation of a bridge and haul road across the Wallerawang – Gwabegar Railway line to permit access to the Hillcroft mining area;
- The extraction of the Marangaroo Sandstone horizon immediately below the Lithgow Coal Seam in an area of Cullen Valley Mine for the Sydney and other sand markets;
- Construction of a rail siding to permit transport of coal and sand products via rail;
- Integration of water management infrastructure; and
- Integration of the management of mine rehabilitation and final landform outcomes for Cullen Valley Mine and Invincible Colliery.



LEGEND	
	EA Boundary
	Coalpac Mining Tenements
	Existing Invincible Colliery
	Existing Cullen Valley Mine
	Wallerawang-Gwabegar Railway
	Roads
	Project Mining Areas
	Indicative Highwall Mining: Combined Katoomba / Middle River / Moolarn seams, Irondale seam & Coalaced Lidsdale / Lithgow seam
	Indicative Highwall Mining: Combined Katoomba / Middle River / Moolarn seams & Irondale seam



<p>Coalpac Pty. Ltd. Proprietors of Invincible Colliery and Cullen Valley Mine</p>	Drawn By: D. Eustace	<p>Conceptual Project Mining Areas</p>	Status:
	Date: 09/11/11		
	Checked: BEL		
	Approved: IF		
	Scale: 1:30,000 @ A3	Drawing No.: 23.4.6 CPMA	Revision: A

Appendix A

**Guidelines for Establishing and Operating Community Consultative
Committees For Mining Projects, NSW Department of Planning June
2007**

EXECUTED as an agreement.

Dated: _____

SIGNED by the **Lithgow City Council**, in accordance with a resolution passed on:

Signature of authorised person

Signature of General Manager

Name/Office held

Name

EXECUTED by **Coalpac Pty Limited** ACN 003 558 914

Signature of director

Signature of director/secretary

Name

Name